

H.R. 4521, the America COMPETES Act of 2022

Madam Speaker, I rise to address H.R. 4521, the America COMPETES Act of 2022, which the House is considering this week. I have worked closely with several committees on key parts of this legislation – including the creation of a new class of start-up visas to attract the next generation of immigrant entrepreneurs and the reauthorization of the National Science Foundation to supercharge our country's investments in cutting-edge research. However, I have concerns with another part of this bill – the inclusion of the "SHOP SAFE Act" in Section 80301.

The laudable intent behind the SHOP SAFE Act is to help combat the online sale of counterfeit goods, which I certainly share. However, the SHOP SAFE Act as presently constructed has three flaws.

First, SHOP SAFE could raise the administrative burdens and transaction costs of many small businesses and small sellers. This could be especially disruptive for the sale of used goods and other secondary markets, and for artisanal and other non-mass market products that do not fit neatly into the big-brand templates that this bill would likely impose. As a result, consumers could also suffer as costs go up and sellers could go down in many of these markets.

Second, only the largest online marketplaces with the deepest pockets may be able to bear the full technological and economic burdens that SHOP SAFE would impose. As a result, the bill risks entrenching their dominance at the expense of nascent and future competitors.

Third, SHOP SAFE takes a "kitchen-sink" approach to combat counterfeit listings, imposing over a dozen sweeping requirements that platforms must implement to avoid crippling liability for third-party infringement. Yet no one has been able to explain which of these steps, if any, will really make a difference over the status quo in stemming the flow of counterfeits. Indeed, some online marketplaces already police their listings in many different ways, without the legal pressure imposed by this bill.

These concerns came up during the Judiciary Committee's markup of the SHOP SAFE Act last fall. Members, including several who voted to advance the bill, called for further work on the bill. Based on public discussion at the markup, it was expected a committee-driven process to make changes to the SHOP SAFE Act would happen before it moved forward. Regrettably, given that the ordinary legislative process toward the Floor did not occur, we now find SHOP SAFE has been inserted without improvements into this much larger legislation.

There is another approach included in the America COMPETES Act, in Section 20213, the INFORM Consumers Act. This legislation would boost enforcement efforts through regulation by requiring online marketplaces to verify the identity of high-volume sellers, while requiring the disclosure of basic information about seller identity to consumers. Some of these requirements overlap with those imposed in the SHOP SAFE Act.

As such, the America COMPETES Act contains two visions of how to make sure online marketplaces are safe. It is my hope that a targeted approach, like the INFORM Consumers Act, will help bring forth a sensible resolution to this issue as the America COMPETES Act moves to a conference committee.